

**REMARKS**

**Restriction Requirement**

In the Restriction Requirement, the Examiner requested Applicants to elect one of the following inventions:

Group I (claims 1-8) drawn to combinations of cDNAs and molecular hybridization methods.

Group II (claims 9-14) drawn to cDNAs, vectors, host cells, methods of producing proteins and nucleic acid molecular hybridization assays.

Group III (claim 15) drawn to polypeptides.

Group IV (claims 16 and 17) drawn to screening methods for identification of compounds that bind proteins.

Group V (claims 18-20) drawn to antibodies, methods of making antibodies, and antibody assays.

Claims 1-8 are drawn to compositions reciting different combinations of individual nucleotide sequences. Applicant is required to select one combination for examination. If the selected combination contains ten or fewer sequences, all sequences of the combination will be searched. If the selected combination contains more than ten sequences, the combination will be searched until one nucleotide sequence is found allowable.

Claims 9-14 are drawn to nucleotides, nucleotide constructs, and/or methods requiring the use of nucleotides or nucleotide constructs that contain more than one individual, independent and distinct nucleotide sequence in the alternative form. Accordingly, these claims are subject to restriction under 35 U.S.C. § 121 as outlined in 1192 O.G. 68 (November 16, 1996). This notice permits the examination of from one to ten independent and distinct nucleotide sequences in a single application based on USPTO resources.

Should applicant elect a group that claims or mentions more than one polynucleotide sequence, applicant is further required to select no more than ONE of the individual sequence for examination. The search of no more than ONE selected sequence may include the complement of the selected sequence and, where appropriate, may include subsequences within the selected

sequence (e.g., oligomeric probes and/or primers).

The Examiner further stated that claims 15-20 are drawn to a large number of polypeptides or mention or require the use of a large number of polypeptides. Should applicant elect a group that claims or mentions more than one polypeptide sequence, applicant is further required to elect one polypeptide sequence within the elected group for examination.

Applicants hereby elect, with traverse, to prosecute Group I, which includes and is drawn to Claims 1-8. Applicants further elect the combination of SEQ ID NOs:1-365, again with traverse. The Examiner's attention is drawn to further requirements in 1192 O.G. 68 (November 16, 1996) that address the instant case in which claims to both individual nucleotide sequences recited in alternative form, such as instant claim 9, and combinations of nucleotide sequences, such as instant claims 1 and 2, are presented:

In applications containing all three claims set forth in examples 1-3, **the PTO will require restriction of the application to ten sequences for initial examination purposes.** Based upon the finding of allowable sequences, claims limited to the allowable sequences as in example 1, all combinations, such as in examples 2 and 3, containing the allowable sequences and any patentably indistinct sequences will be rejoined and allowed.

Rejoinder will be permitted for claims requiring any allowable sequence(s). Any claims which have been restricted and nonselected and which are limited to the allowable sequence(s) will be rejoined and examined. (Emphasis added)

Accordingly, applicant should be permitted in the current circumstances to select up to ten sequences relative to the examination of claims 1-8 of Group I and claims 9-14 of Group II. Applicants therefore select SEQ ID NOs:1, 2, 8, 18, 20, 25, 27, 30, 32, and 37 relative to the examination of both claims 1-8 of Group I and claims 9-14 of Group II. Applicants request reconsideration of the Restriction Requirement and, in accordance with 1192 O.G. 68 (November 16, 1996) and the MPEP § 803.04, examination of selected SEQ ID NOs:1, 2, 8, 18, 20, 25, 27, 30, 32, and 37 relative to claims 1-14 of Groups I and II.

In the event the Examiner maintains the Restriction Requirement to elected Group I, applicants

will reserve the right to request rejoinder of claims 9-14 of Group II as composition of matter claims, and their methods of use, that are limited to the allowable sequences of the selected SEQ ID NOs:1, 2, 8, 18, 20, 25, 27, 30, 32, and 37. Claim 9 will be amended to limit the individually

claimed sequences to those allowable sequences of the selected SEQ ID NOs:1, 2, 8, 18, 20, 25, 27, 30, 32, and 37 at the appropriate time. Applicants also reserve the right to prosecute the subject matter of non-elected claims in subsequent divisional applications.

**CONCLUSION**

Applicants believe that no fee is due with this communication. However, if the USPTO determines that a fee is due, the Commissioner is hereby authorized to charge Deposit Account No. **09-0108**.

Respectfully submitted,

INCYTE CORPORATION

Date:

December 17, 2003 David G. Streeter

David G. Streeter, Ph.D.

Reg. No. 43,168

Direct Dial Telephone: (650) 845-5741

**Customer No.: 27904**

3160 Porter Drive

Palo Alto, California 94304

Phone: (650) 855-0555

Fax: (650) 849-8886